

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL  
COMPACT CONSENT ACT

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JUNE 20, 1995.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. BLILEY, from the Committee on Commerce,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 558]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill  
(H.R. 558) to grant the consent of the Congress to the Texas Low-  
Level Radioactive Waste Disposal Compact, having considered the  
same, report favorably thereon without amendment and rec-  
ommend that the bill do pass.

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## THE LEGISLATION

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Texas Low-Level Radioactive Waste Disposal Compact Consent Act”.

**SEC. 2. CONGRESSIONAL FINDING.**

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.).

**SEC. 3. CONDITIONS OF CONSENT TO COMPACT.**

The consent of the Congress to the compact set forth in section 5—

(1) shall become effective on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.); and

(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

**SEC. 4. CONGRESSIONAL REVIEW.**

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided in such compact.

**SEC. 5. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT.**

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021d(a)(2)), the consent of the Congress is given to the States of Texas, Maine, and Vermont to enter into the Texas Low-Level Radioactive Waste Disposal Compact. Such compact is substantially as follows:

“TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT

“ARTICLE I. POLICY AND PURPOSE

“SEC. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b–2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive waste. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

“ARTICLE II. DEFINITIONS

“SEC. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

“(1) ‘Act’ means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b–2021j).

“(2) ‘Commission’ means the Texas Low-Level Radioactive Waste Disposal Compact Commission established in Article III of this compact.

“(3) ‘Compact facility’ or ‘facility’ means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

“(4) ‘Disposal’ means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

“(5) ‘Generate,’ when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

“(6) ‘Generator’ means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the commission.

“(7) ‘Host county’ means a county in the host state in which a disposal facility is located or is being developed.

“(8) ‘Host state’ means a party state in which a compact facility is located or is being developed. The State of Texas is the host state under this compact.

“(9) ‘Institutional control period’ means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

“(10) ‘Low-level radioactive waste’ has the same meaning as that term is defined in Section 2(9) of the Act (42 U.S.C. 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

“(11) ‘Management’ means collection, consolidation, storage, packaging, or treatment.

“(12) ‘Operator’ means a person who operates a disposal facility.

“(13) ‘Party state’ means any state that has become a party in accordance with Article VII of this compact. Texas, Maine, and Vermont are initial party states under this compact.

“(14) ‘Person’ means an individual, corporation, partnership or other legal entity, whether public or private.

“(15) ‘Transporter’ means a person who transports low-level radioactive waste.

“ARTICLE III. THE COMMISSION

“SEC. 3.01. There is hereby established the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

“SEC. 3.02. A quorum of the commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the commission must receive the affirmative vote of a majority of its members.

“SEC. 3.03. The commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, Section 59, of the Texas Constitution. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

“SEC. 3.04. The commission shall:

“(1) Compensate its members according to the host state’s law.

“(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the non-host party states in accordance with their respective statutes.

“(3) Be located in the capital city of the host state.

“(4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.

“(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

“(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

“(7) Prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a non-host party state to store low-level radioactive waste generated outside of the state.

“(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year.

“(9) Assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

“(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

“(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995–2045, including decommissioning waste. The shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from non-host party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the non-host party states in order to assure that over the life of this agreement shipments from the non-host party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

“SEC. 3.05. The commission may:

“(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

“(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

“(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

“(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the commission shall be adopted in accordance with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon’s Texas Civil Statutes).

“(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

“(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

“(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radio-

active waste, and subject to any other term or condition, as is determined by the commission.

“(8) Monitor the exportation outside of the party states of material, which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

“SEC. 3.06. Jurisdiction and venue of any action contesting any action of the commission shall be in the United States District Court in the district where the commission maintains its office.

“ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

“SEC. 4.01. The host state shall develop and have full administrative control over the development, management and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be entitled to unlimited use of the facility over its operating life. Use of the facility by the non-host party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of Section 3.04(11) of Article III.

“SEC. 4.02. Low-level radioactive waste generated within the party states shall be disposed of only at the compact facility, except as provided in Section 3.05(7) of Article III.

“SEC. 4.03. The initial states of this compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

“SEC. 4.04. The host state shall do the following:

“(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

“(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

“(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and shall, within 30 working days of its action, provide a written explanation to the commission of the closure, and implement any adopted contingency plan.

“(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402.272 and 402.273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the non-host party states. Fees shall also be sufficient to reasonably support the activities of the Commission.

“(5) Submit an annual report to the commission on the status of the facility, including projections of the facility’s anticipated future capacity, and on the related funds.

“(6) Notify the Commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and Commission vote, at noncompact facilities.

“(7) Promptly notify the other party states of any legal action involving the facility.

“(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.

“SEC. 4.05. Each party state shall do the following:

“(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste from specifications of the host state.

“(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

“(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in this compact shall prohibit the storage, treatment, or management of waste by a generator.

“(4) Provide the commission with any data and information necessary for the implementation of the commission’s responsibilities, including taking those actions necessary to obtain this data or information.

“(5) Pay for community assistance projects designated by the host county in an amount for each non-host party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by Congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state’s regulatory body.

“(6) Provide financial support for the commission’s activities prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under Section 7.07 of Article VII. Each party state will be responsible for annual payments equalling its pro-rata share of the commission’s expenses, incurred for administrative, legal, and other purposes of the commission.

“(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an addi-

tional arbitrator. The determination of a majority of the arbitrators shall be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 U.S.C. Sections 1 to 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

“(8) Provide on a regular basis to the commission and host state—

“(A) an accounting of waste shipped and proposed to be shipped to the compact facility, by volume and curies;

“(B) proposed transportation methods and routes; and

“(C) proposed shipment schedules.

“(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

“SEC. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this compact.

#### “ARTICLE V. PARTY STATE CONTRIBUTIONS

“SEC. 5.01. Each party state, except the host state, shall contribute a total of \$25 million to the host state. Payments shall be deposited in the host state treasury to the credit of the low-level waste fund in the following manner except as otherwise provided. Not later than the 60th day after the date of congressional ratification of this compact, each non-host party state shall pay to the host state \$12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each non-host party state shall pay to the host state an additional \$12.5 million.

“SEC. 5.02. As an alternative, the host state and the non-host states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in Section 5.01 of this article.

#### “ARTICLE VI. PROHIBITED ACTS AND PENALTIES

“SEC. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III.

“SEC. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radio-



active waste by a generator, nor its disposal pursuant to 10 C.F.R. Part 20.302.

“SEC. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.

“ARTICLE VII. ELIGIBILITY, ENTRY INTO EFFECT; CONGRESSIONAL CONSENT; WITHDRAWAL; EXCLUSION

“SEC. 7.01. The states of Texas, Maine, and Vermont are party states to this compact. Any other state may be made eligible for party status by a majority vote of the commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial non-host party states under Section 3.04(11) of Article III and Section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this section, as a member of this compact; provided, however, the specific provisions of this compact, except for those pertaining to the composition of the commission and those pertaining to Section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

“SEC. 7.02. Upon compliance with the other provisions of this compact, a state made eligible under Section 7.01 of this article may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment, the legislature enacts this compact.

“SEC. 7.03. Any party state may withdraw from this compact by repealing enactment of this compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the compact, the host state’s legislature, without the consent of the non-host party states, shall have the right to modify the composition of the commission so that the host state shall have a voting majority on the commission, provided, however, that any modification maintains the right of each initial party state to retain one voting member on the commission.

“SEC. 7.04. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the non-host party states may continue to use the facility during that time. The financial obligation of the non-host party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the compact or abandons plans to operate a facility prior to the date of any non-host party state payment under Sections 4.05(5) and (6) of Article IV or Article V, the non-host party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the non-host party states if the host state withdraws from the compact or is unable to develop and operate a compact facility.

“SEC. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under Sections 4.05(5) and (6) of Article IV that were due during the two-year period, and shall not be entitled to any refund of payments previously made.

“SEC. 7.06. Any party state that substantially fails to comply with the terms of the compact or to fulfill its obligations hereunder may have its membership in the compact revoked by a seven-eighths vote of the commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the commission will be subject to the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon’s Texas Civil Statutes), except that a party state may appeal the commission’s revocation decision to the United States District Court in accordance with Section 3.06 of Article III. Revocation shall take effect one year from the date such party state receives written notice from the commission of a final action. Written notice of revocation shall be transmitted immediately following the vote of the commission, by the chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

“SEC. 7.07. This compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this compact, the compact shall be in full force and effect as to Texas and the other ratifying state, and this compact shall be interpreted as follows:

“(1) Texas and the other ratifying state are the initial party states.

“(2) The commission shall consist of two voting members from the other ratifying state and six from Texas.

“(3) Each party state is responsible for its pro-rata share of the commission’s expenses.

“SEC. 7.08. This compact is subject to review by the United States Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

“SEC. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the non-host party states, to modify the provisions contained in Section 3.04(11) of Article III to comply with Section 402.219(c)(1), Texas Health & Safety Code, as long as the modification does not impair the rights of the initial non-host party states.

#### “ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

“SEC. 8.01. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

“SEC. 8.02. This compact does not affect any judicial proceeding pending on the effective date of this compact.

“SEC. 8.03. No party state acquires any liability, by joining this compact, resulting from the siting, operation, maintenance, long-term care or any other activity relating to the compact facility. No non-host party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care relating to the compact facility. Except as otherwise expressly provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners and operators of facility shall be liable for their acts, omissions, conduct or relationships in accordance with applicable law. By entering into this compact and securing the ratification by Congress of its terms, no party state acquires a potential liability under section 5(d)(2)(C) of the Act (42 U.S.C. Sec. 2021e(d)(2)(C)) that did not exist prior to entering into this compact.

“SEC. 8.04. If a party state withdraws from the compact pursuant to Section 7.03 of Article VII or has its membership in this compact revoked pursuant to section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under Section 8.03 of this article.

“SEC. 8.05. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

“SEC. 8.06. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

“(1) The United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2011 et seq.).

“(2) An agreement state under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2021).

“SEC. 8.07. Nothing in this compact confers any new authority on the states or commission to do any of the following:

“(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States Department of Transportation.

“(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

“(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission.”.

#### PURPOSE AND SUMMARY

H.R. 558 grants the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact. The compact is be-

tween the States of Texas, Maine, and Vermont. The compact was entered into in fulfillment of the States' responsibilities under the Low-Level Radioactive Waste Policy Act to develop facilities for the disposal of low-level radioactive waste generated within their borders.

#### BACKGROUND AND NEED FOR LEGISLATION

Low-Level radioactive waste, as distinguished from spent nuclear reactor fuel or high-level radioactive waste, emits a low intensity of radiation which decays relatively rapidly. The vast majority of low-level waste (97 percent) does not require special shielding for the protection of workers or the surrounding community. In addition to the low-level waste generated by nuclear utilities, such as discarded protective clothing, low-level radioactive waste includes medical waste produced by hospitals and materials produced by universities in the course of research work.

The Congress's first effort to address the need for development of low-level waste facilities was the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96-573). The 1980 Act established the fundamental principles of Federal policy on nuclear waste disposal, the most important being that States would be responsible for the disposal of low-level radioactive waste generated within their borders (other than certain Federal waste). The Federal government would be responsible for the disposal of other radioactive waste, including high-level transuranic waste. States were authorized to enter into compacts to provide for the establishment and operation of disposal facilities, and compacts could restrict access to a disposal facility to the members of the compact.

The desire to restrict access to disposal facilities was a driving force behind the adoption of the 1980 Act and the subsequent 1985 Low-Level Radioactive Waste Policy Amendments Act (P.L. 99-240). The States of Washington, Nevada, and South Carolina, which hosted the nation's only three low-level radioactive waste disposal facilities, expressed their unwillingness to continue accepting all of the country's low-level radioactive waste. Under the 1980 Act, these States could stop accepting out-of-compact waste after January 1, 1986.

By 1985, it was apparent that the 1986 cutoff dated was impracticable, and the 1985 Act extended the cutoff date. Additionally, the 1985 Act established a series of penalty surcharges and denial of access for States failing to meet the legislation's milestones for progress toward the development of compact facilities. Finally, the 1985 Act granted the three States with existing disposal facilities the right to impose escalating surcharges on waste, and a cap on the volume of waste they would have to accept.

Presently, nine interstate compacts have been granted Congressional consent, comprising 42 States.

The Texas Low-Level Radioactive Waste Disposal Compact has been approved by the State legislatures and Governors of Texas, Maine, and Vermont. As an additional condition of its own participation in the compact, the State of Maine approved the compact through a public referendum. The compact specifies that the State of Texas will host the disposal facilities. Like previously-approved compacts, the Texas compact provides that no low-level radioactive

waste may be exported from or imported to the regional facility except with approval of the governing commission of the compact. This provision relies on the authority in Section 4 of the 1985 Act, which grants Congressionally approved compacts the right to control access to the compact facility. While such consent is not necessary for the formation of interstate agreements, the absence of Congressional consent raises questions regarding the rights of compact members to exclude waste from non-member States. The consent granted by Congress continues only as long as the compact complies with the provisions of the Low-Level Radioactive Waste Policy Act.

#### HEARINGS

On May 11, 1995, the Subcommittee on Energy and Power held a legislative hearing on H.R. 558. Witnesses included: Representatives Jack Fields, Henry Bonilla and Ronald Coleman; Ms. Laurie Rich, Executive Director, State of Texas Office of State-Federal Relations; and Mr. David Fredick, attorney, Henry, Lawere, Johnson, Hess and Frederick.

#### COMMITTEE CONSIDERATION

The Subcommittee on Energy and Power met in open session on May 16, 1995, and ordered reported the bill H.R. 558 without amendment by voice vote. On May 24, 1995, the Committee met in open session and ordered reported the bill H.R. 558 without amendment by a recorded vote of 41–2, a quorum being present.

#### ROLL CALL VOTES

Pursuant to clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, following are listed the recorded votes on the motion to report H.R. 558 and on amendments offered to the measure, including the names of those Members voting and for and against.

#### COMMITTEE ON COMMERCE—104TH CONGRESS ROLL CALL VOTE NO. 41

Bill: H.R. 558, Texas Low-Level Radioactive Waste Disposal Compact Consent Act.

Amendment: Amendment by Mr. Bryant re: additional condition on the siting of the facility.

Disposition: Not agreed to, by a rollcall vote of 14 ayes to 28 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley .....		X	.....	Mr. Dingell .....	X	.....	.....
Mr. Moorhead .....		X	.....	Mr. Waxman .....	X	.....	.....
Mr. Fields .....		X	.....	Mr. Markey .....	X	.....	.....
Mr. Oxley .....		X	.....	Mr. Tauzin .....		X	.....
Mr. Bilirakis .....		X	.....	Mr. Wyden .....	X	.....	.....
Mr. Schaefer .....		X	.....	Mr. Hall .....		X	.....
Mr. Barton .....		X	.....	Mr. Bryant .....	X	.....	.....
Mr. Hastert .....		X	.....	Mr. Boucher .....		.....	.....
Mr. Upton .....		.....	.....	Mr. Manton .....	X	.....	.....
Mr. Stearns .....		X	.....	Mr. Towns .....		X	.....
Mr. Paxon .....		X	.....	Mr. Studds .....		.....	.....
Mr. Gillmor .....		X	.....	Mr. Pallone .....	X	.....	.....
Mr. Klug .....		X	.....	Mr. Brown .....	X	.....	.....

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Franks .....		X	.....	Mrs. Lincoln .....	X	.....	.....
Mr. Greenwood .....		X	.....	Mr. Gordon .....		X	.....
Mr. Crapo .....		X	.....	Ms. Furse .....	X	.....	.....
Mr. Cox .....		X	.....	Mr. Deutsch .....		.....	.....
Mr. Deal .....		X	.....	Mr. Rush .....	X	.....	.....
Mr. Burr .....		X	.....	Ms. Eshoo .....	X	.....	.....
Mr. Bilbray .....		X	.....	Mr. Klink .....	X	.....	.....
Mr. Whitfield .....		X	.....	Mr. Stupak .....	X	.....	.....
Mr. Ganske .....		X	.....				
Mr. Frisa .....		X	.....				
Mr. Norwood .....		X	.....				
Mr. White .....		X	.....				
Mr. Coburn .....			.....				

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 42

**Bill: H.R. 558, Texas Low-Level Radioactive Waste Disposal Compact Consent Act.**

**Motion: Motion by Mr. Bliley to order H.R. 558 reported to the House, unamended.**

**Disposition: Agreed to, by a rollcall vote of 41 ayes to 2 nays.**

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley .....	X	.....	.....	Mr. Dingell .....	X	.....	.....
Mr. Moorhead .....	X	.....	.....	Mr. Waxman .....		.....	.....
Mr. Fields .....	X	.....	.....	Mr. Markey .....	X	.....	.....
Mr. Oxley .....	X	.....	.....	Mr. Tauzin .....	X	.....	.....
Mr. Bilirakis .....	X	.....	.....	Mr. Wyden .....	X	.....	.....
Mr. Schaefer .....	X	.....	.....	Mr. Hall .....	X	.....	.....
Mr. Barton .....	X	.....	.....	Mr. Bryant .....		X	.....
Mr. Hastert .....	X	.....	.....	Mr. Boucher .....	X	.....	.....
Mr. Upton .....	X	.....	.....	Mr. Manton .....	X	.....	.....
Mr. Stearns .....	X	.....	.....	Mr. Towns .....	X	.....	.....
Mr. Paxon .....	X	.....	.....	Mr. Studds .....		.....	.....
Mr. Gillmor .....	X	.....	.....	Mr. Pallone .....	X	.....	.....
Mr. Klug .....	X	.....	.....	Mr. Brown .....	X	.....	.....
Mr. Franks .....	X	.....	.....	Mrs. Lincoln .....	X	.....	.....
Mr. Greenwood .....	X	.....	.....	Mr. Gordon .....	X	.....	.....
Mr. Crapo .....	X	.....	.....	Ms. Furse .....	X	.....	.....
Mr. Cox .....	X	.....	.....	Mr. Deutsch .....		.....	.....
Mr. Deal .....	X	.....	.....	Mr. Rush .....	X	.....	.....
Mr. Burr .....	X	.....	.....	Ms. Eshoo .....	X	.....	.....
Mr. Bilbray .....	X	.....	.....	Mr. Klink .....	X	.....	.....
Mr. Whitfield .....	X	.....	.....	Mr. Stupak .....		X	.....
Mr. Ganske .....	X	.....	.....				
Mr. Frisa .....	X	.....	.....				
Mr. Norwood .....	X	.....	.....				
Mr. White .....	X	.....	.....				
Mr. Coburn .....			.....				

COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

**Bill: H.R. 558, Texas Low-Level Radioactive Waste Disposal Compact Consent Act.**

**Amendment: Amendment by Mr. Bryant re: liability of compact parties for any international claim.**

**Disposition: Not agreed to, by a voice vote.**

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Energy and Power held a

legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that enactment of H.R. 558 would result in no additional costs to the Federal Government.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 24, 1995.*

Hon. THOMAS J. BLILEY, JR.,  
*Chairman, Committee on Commerce,*  
*U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 558, the Texas Low-Level Radioactive Waste Compact Consent Act, as ordered reported by the House Committee on Commerce on May 24, 1995. CBO estimates that enacting this bill would result in no significant cost to the federal government or to state or local governments.

This bill would give Congressional consent to formation of a low-level radioactive waste disposal compact between the states of Texas, Maine, and Vermont. The bill includes provisions for creating a commission to help implement the compact and establishes rights and responsibilities for the three states for disposing of low-level radioactive waste in Texas.

Enactment of H.R. 558 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title. The section cites the Act as the “Texas Low-Level Radioactive Waste Disposal Compact Consent Act.”

Section 2. Congressional Finding. The section provides that the purpose of the Texas compact is to fulfill the member States’ obligations under the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.) which permits States to enter into interstate compacts to provide for disposal facilities for low-level radioactive waste.

Section 3. Conditions of Consent to Compact. The section establishes the following conditions of the compact: (a) that the compact shall become effective on the date of enactment of the Act; (b) that Congressional consent is subject to the provisions of the Low-Level Radioactive Waste Policy Act; and (c) that Congressional consent is conditioned upon the regional commission’s compliance with all provisions of the Low-Level Radioactive Waste Policy Act.

Section 4. Congressional Review. The section ensures that Congress may alter, amend or repeal the Texas Compact Consent Act after a ten-year period following the date of enactment of the Act and at such intervals thereafter as provided in the compact.

Section 5. Texas Low-Level Radioactive Waste Disposal Compact. The section conveys the consent of Congress to the States of Texas, Maine, and Vermont to enter into the Texas Low-Level Radioactive Waste Disposal Compact, and includes the text of the compact agreement. The compact agreement is summarized as follows:

*Article 1. Policy and Purpose.*—States the policy and purpose of the compact to encourage the cooperative efforts of the three States to manage and dispose of low-level radioactive waste.

*Article 2. Definitions.*—Adds definitions for the following terms: “Act”, “Commission”, “Compact facility or facility”, “disposal”, “generate”, “generator”, “host county”, “host State”, “institutional control period”, “low-level radioactive waste”, “management”, “operator”, “party State”, “person”, and “transporter”.

*Article 3. The Commission.*—Establishes the compact commission, which is to be an eight-member panel. Each party State is entitled to one voting member: the host State is entitled to six voting members. Establishes the commission as a separate entity from the party States, and defines the duties and responsibilities of the commission. Among these duties is a limitation on the amount of waste that non-host party States may contribute: shipments may not exceed 20 percent of the volume estimated to be disposed by the host State over the 50-year span of the compact, and total shipments from non-host party States shall not exceed 20,000 cubic feet per year.

*Article 4. Rights, Responsibilities, and Obligations of Party States.*—States that the host State shall have full control over the development, management and operation of a facility for low-level waste disposal. Requires the party States to dispose of their low-level wastes at the compact facility. Establishes duties of the host State, including compliance with applicable State and Federal statutes in operating the disposal facility, the establishment of disposal fees, and closure of the facility when necessary to protect public health and safety or to protect natural resources. Establishes du-



ties of the party States, including steps to reduce the overall volume of low-level waste, and the payment of community assistance projects in the host county in an amount equal to 10 percent of the amount required of each State for entry into the compact.

*Article 5. Party State Contributions.*—Requires each party State to contribute a total of \$25 million to the host State's low-level waste fund for the purpose of assisting with the development, operation and post-closure monitoring of the compact facility.

*Article 6. Prohibited Acts and Penalties.*—Requires the compact States to dispose of their low-level wastes at the compact facility, and requires that no person may dispose of any waste within the party States unless generated within the party States. Provides penalties for violation of the article.

*Article 7. Eligibility, Entry Into Effect; Congressional Consent; Withdrawal; Exclusion.*—Establishes Texas, Maine, and Vermont as party States to the compact. Establishes a procedure by which additional States may be considered for compact membership, and by which party States, including the host State, may withdraw from the compact. States that the compact shall take effect following enactment by the party States and consent of the Congress. Allows Congressional review of the compact every 5 years after its effective date.

*Article 8. Construction and Severability.*—Ensures that non-host party States shall not be liable for harm or damage associated with the siting, operation, maintenance or long-term care of the compact facility. States that generators, transporters, owners and operators of the compact facility shall be liable for their actions under applicable law. Ensures the full regulatory authorities of the U.S. Nuclear Regulatory Commission and State authorities under the Atomic Energy Act (42 U.S.C. 2021).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

#### DISSENTING VIEWS OF HON. JOHN BRYANT

The "Texas Low-Level Radioactive Waste Disposal Compact Consent Act"—H.R. 558—does not deserve the support of the United States Congress and should not be ratified by the House. The overwhelming vote in the House Commerce Committee should not lead one to believe this compact is non-controversial. What the Commerce Committee did was vote against the interests of the 2,900 citizens of Texas' Hudspeth County.

By not being regional in nature, this compact does not conform with the Low-Level Radioactive Waste Disposal Act of 1980. By choosing to locate the compact site within fourteen miles of an international border, this compact subjects the Federal Government to an unnecessary and excessive financial liability. The siting of the compact clearly violates the spirit, if not the letter, of the La Paz Agreement between the United States and Mexico which called for mutual cooperation to protect and improve the environment along our common border.

Section 4, Subsection (a) of the Low-Level Radioactive Waste Policy Act states:

(2)(A) To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of *regional* disposal facilities for low-level radioactive waste. (Emphasis added.)

The benefit of a regional compact is to minimize the risk to citizens living in states outside of the compact. It was not the intent of the framers of the Act that radioactive waste would be moved over thousands of miles through numerous states, including highly populated areas, that have no vote or legislative oversight of the compact.

This compact is unlike any other compact previously approved by Congress in that the host state—Texas—is the only state that has proposed to place its compact site on an international border, near the Rio Grand River, in an environmentally sensitive area.

The proposed site, which is the only site being considered by the State, is also a volatile earthquake zone. On April 13, 1995, an earthquake scoring 5.6 on the Richter scale struck the West Texas region. Its epicenter was less than one hundred miles from the proposed site, and the quake was felt by individuals several hundreds miles away. Numerous earthquakes have occurred in the area—the largest, 6.4 on the Richter scale in 1931 with its epicenter only 40 miles from the site—and the U.S. Geological Survey has concluded that quakes of 7.5 magnitude could occur at any time along any of the fourteen faults in the immediate vicinity.

Any contamination in Mexico resulting from damage to the disposal facility due to an earthquake will force the United States gov-

ernment to compensate the Mexican government and private citizens for any damages. The siting of this compact in a geologically volatile area should be of considerable importance to this Congress.

Proponents claim that the siting of the compact does not violate the La Paz Agreement because the State of Texas has notified the Mexican Government of its decisions throughout the selection process. However, the Agreement clearly calls for a coordinated, cooperative effort to resolve the environmental problems along the border—not to create new ones. What is the point in attaining bi-national agreements to cooperate if a U.S. state entity can unilaterally circumvent the agreement, leaving the foreign government no recourse? That is why the Federal government has reserved foreign relations as its responsibility. This Congress would not tolerate any such action if taken by a Mexican state government. It is our responsibility to assure that state governments do not violate or jeopardize international agreements.

It is completely within the purview of this Congress to attach conditions to the approval of a low-level radioactive waste interstate compact.

I was pleased to have the support of fourteen of my colleagues for my amendment which would have made approval of this compact dependent upon the siting of the disposal site in a location no adjacent to an international border which is also an active earthquake zone.

I believe this to be a reasonable and rational provision and am disappointed that this committee chose to ignore the potentially devastating effects ratification of this compact will have on the border region and the federal taxpayer.

JOHN BRYANT.

